

§ 955.6

39 CFR Ch. I (7–1–11 Edition)

bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. The party filing with the Board a document as to which such a waiver has been granted, shall notify the other party at the time of filing that the document is available for inspection at the offices of the Board or of the party.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document. Unless otherwise provided by Board order, any such objection shall be made at least 10 days prior to a hearing or the date specified for settling the record in the event there is no hearing on the appeal. If timely objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 955.14 and 955.21.

§ 955.6 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion may be afforded on application of either party. The Board may at any time and on its own motion raise the issue of its jurisdiction to proceed with a particular case.

(b) A motion filed in lieu of an answer shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by Board order. Any other dispositive motion shall be filed as soon as practicable after the grounds therefor are known.

(c) Motions for summary judgment may be considered by the Board. However, the Board may defer ruling on a motion for summary judgment, in its discretion, until after a hearing or other presentation of evidence. Motions for summary judgment may be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief as a matter of law. The parties are to consider proceeding by submission of the case without a hearing in accordance with

§ 955.12, in lieu of a motion for summary judgment.

(1) Motions for summary judgment shall include a separate document titled *Statement of Uncontested Facts*, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to affidavits, declarations and/or documents relied upon to support such statement.

(2) The opposing party shall file with its opposition a separate document titled *Statement of Genuine Issues*. This document shall identify, by reference to specific paragraph numbers in the moving party's *Statement of Uncontested Facts*, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement, and support its opposition with references to affidavits, declarations and/or documents that demonstrate the existence of a genuine dispute.

(3) The moving party and the non-moving party shall each submit a memorandum of law supporting or opposing summary judgment.

(4) If, despite reasonable efforts, the opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may issue such other order as is just. The parties should not expect the Board to search the record for evidence in support of either party's position.

EFFECTIVE DATE NOTE: At 76 FR 37660, June 28, 2011, § 955.6 was amended by revising paragraph (a), effective July 28, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 955.6 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Oral argument on the motion may be afforded on application of either party, in the Board's discretion, or on the Board's initiative. The Board may at any time and on its

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own initiative raise the issue of its jurisdiction to proceed with a particular case.

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§ 955.7 Pleadings.

(a) *Appellant*. Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Should the complaint not be filed within the time required, appellant's claim and notice of appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to constitute the complaint and the respondent shall be so notified.

(b) *Respondent*. Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant, and shall serve the appellant with a copy. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within the time required, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the appellant shall be so notified.

(c) *Affirmative claims by the respondent*. Where an appellant has appealed an affirmative claim by the respondent asserted in a final decision by a Postal Service contracting officer, such as a termination for default or a Postal Service claim that a contractor owes the Postal Service money under a contract, the Board may order the respondent to file the complaint as described in § 955.7(a), and the appellant to file the answer as described in § 955.7(b).

EFFECTIVE DATE NOTE: At 76 FR 37660, June 28, 2011, § 955.7 was amended by revising paragraph (a), effective July 28, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 955.7 Pleadings.

(a) *Appellant*. Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon the appellant's request or on the Board's own initiative, the appellant's claim, notice of appeal or other document may be deemed to constitute the complaint if in the opinion of the Board the issues before the Board are sufficiently defined.

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§ 955.8 Amendments of pleadings or record.

(a) Upon its own initiative or upon application by a party, the Board may, in its discretion, order a party to submit a more definite statement of the complaint or answer, or to reply to an answer.

(b) When issues within the proper scope of an appeal, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they may be treated in all respects as if they had been raised in the pleadings. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, in its discretion the Board may admit the evidence and grant the objecting party a continuance or other relief if necessary to enable it to meet such evidence.

§ 955.9 Hearing election.

As directed by Board order, each party shall inform the Board, in writing, whether it desires a hearing as prescribed in §§ 955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in § 955.12. If a hearing is elected, the election should state where and when the electing party desires the